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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF PIERCE

9 KROGER, INC. d/b/a FRED MEYER STORES,
10 INC.,

11 Plaintiff,

12 vs.

13 CENTIMARK CORPORATION, BRIAN
RAYMORE, and ARCH INSURANCE
COMPANY,

14 Defendants.

15 NO.

16 COMPLAINT FOR BREACH OF
17 CONTRACT, BAD FAITH, CONSUMER
PROTECTION ACT, INSURANCE FAIR
CONDUCT ACT, AND DECLARATORY
JUDGMENT

18 COMES NOW the Plaintiff, Kroger, Inc. d/b/a Fred Meyer Stores, Inc., by and through
19 its attorney of record, and hereby alleges as follows:

20 I. PARTIES

21 1.1. Plaintiff Kroger, Inc. d/b/a Fred Meyer Stores, Inc. ("Fred Meyer") is an Ohio
22 corporation doing business in Pierce County, Washington.

23 1.2. Defendant CentiMark Corporation ("CentiMark") is an active Pennsylvania
24 corporation, also d/b/a QuestMark Corporation. At all material times to this action, CentiMark
25 Corporation was doing business in Pierce County, Washington.

1.3. Defendant Brian Raymore was at all material times the Vice-President of Safety

COMPLAINT - 1

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and Risk for CentiMark, acting within the scope of his employment as a corporate representative of CentiMark when communicating with Fred Meyer.

1.4. Defendant Arch Insurance Company ("Arch Insurance") is an active Missouri corporation with headquarters in New Jersey. At all material times to this action, Arch Insurance Company insured CentiMark and was authorized to and performed business as an insurer in the State of Washington, under WAOIC license number 58676.

II. JURISDICTION AND VENUE

2.1 This Court has proper venue and jurisdiction as the Plaintiff and Defendants transacted business in Pierce County, Washington, and the action complained of herein occurred in whole or part in Pierce County.

III. STATEMENT OF FACTS

UNDERLYING LAWSUIT

3.1. On September 27, 2015, customer Mary Arlene Luton ("Luton") was injured in a trip and fall accident that occurred at the Fred Meyer Store located at 1100 North Meridian, Puyallup, Washington.

3.2. At the time of her fall, the store was undergoing a store-wide renovation, while remaining open for business.

3.3. At all material times, CentiMark was Fred Meyer's flooring contractor for the store renovation.

3.4. On December 15, 2015, Luton filed a complaint against Fred Meyer and Colorado Structures, Inc., (CSI) alleging that CSI "was engaged in ongoing construction work at the retail grocery store owned and operated by Fred Meyer"; performance of that work included "work in the aisle at check stand #2," and on the floor in the aisle at check stand #2.

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1 "there was a circular access cover that had the appearance of a small manhole cover, which
 2 covered an access to electrical equipment below the floor." Underlying Complaint ¶ 3.3, ¶ 4.4,
 3 ¶ 4.5.

4 3.5. The complaint further alleges that "[t]he cover had been placed there by
 5 Defendant CSI, but the presence of that cover and the condition of the floor around that cover
 6 was known to CSI and was also known or should have been known to Defendant Fred Meyer."
 7 Underlying Complaint ¶ 4.5.

8 3.6. The complaint further alleges that "there was a separation, or crack between the
 9 circular access cover and the floor in the aisle at check stand #2 that was caused by the
 10 placement of the circular access cover on the floor in that aisle. That separation caused an
 11 uneven walking surface and that separation was large enough to catch the heel of a shoe. The
 12 separation between the circular access cover and the floor in the aisle at check stand #2 was
 13 known or should have been known to the Defendants, but was not obvious to customers such as
 14 Plaintiff." Underlying Complaint ¶ 4.6 to 4.7.

16 3.7. The complaint alleges that plaintiff's shoe heel got caught in the separation or
 17 crack between a circular access cover and the surrounding floor in check stand aisle #2, which
 18 caused her to lose her balance, trip, fall, and sustain serious injuries. Underlying Complaint ¶¶
 19 4.10 to 4.13.

20 3.8. The December 15, 2015. complaint alleges that defendants CSI and Fred
 21 Meyer's failure to maintain the premises in a safe and proper condition was a proximate cause
 22 of her injuries; that CSI and Fred Meyer should that the condition on the floor "constituted a
 23 condition that involved an unreasonable risk of harm" to plaintiff; and that CSI and Fred Meyer
 24 are both negligent. Underlying Complaint ¶¶ 4.14 to 4.17.

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1 3.9. On April 1, 2016, Luton filed an amended complaint, added CentiMark as a
 2 party, and alleged that CentiMark “was engaged as a flooring contractor” by Fred Meyer and
 3 was “doing ongoing flooring work as part of the renovation project” at Fred Meyer. Underlying
 4 Amended Complaint ¶ 4.5.

5 3.10. The amended complaint alleges that the “cover had been placed there prior to
 6 the renovation work underway at the store. The presence of that cover and the condition of the
 7 floor around that cover was known to CM/QM [CentiMark], CSI, and it also was known or
 8 should have been known to Defendants CSI [sic] and Fred Meyer.” Underlying Amended
 9 Complaint ¶ 5.5.

10 3.11. The amended complaint further alleges that “there was a separation, or crack
 11 between the circular access cover and the floor in the aisle at check stand #2 that was caused by
 12 the removal of the flooring material, vinyl composition tile (VCT), on the floor in check stand
 13 #2. That separation created an uneven walking surface and that separation was large enough to
 14 catch the heel of a shoe.” Underlying Amended Complaint ¶ 5.6.

15 3.12. The amended complaint alleges that the “VCT on the floor in check stand #2
 16 had been removed by employees of CM/QM [CentiMark]. That was done as part of the store
 17 renovation” and the “separation between the circular access cover and the floor in the aisle at
 18 check stand #2 was known or should have been known to the Defendants.” Underlying
 19 Amended Complaint ¶¶ 5.7 to 5.8.

20 3.13. Luton alleged that Fred Meyer, CentiMark, and CSI were negligent because they
 21 failed to maintain the premises “in a safe and proper condition;” failed to exercise reasonable
 22 care concerning the condition of the floor around the access cover; and failed to protect Luton
 23 from an unreasonable risk of harm. Underlying Amended Complaint ¶¶ 5.15 to 5.18.

24 COMPLAINT - 4

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1 3.14. Luton's complaint and amended complaint are incorporated as if fully set forth
2 herein.

3 3.15. Luton settled her claim against CSI in March 2017 for USD \$25,000.00.

4 3.16. Luton, Fred Meyer, and CentiMark submitted the case to a binding arbitration,
5 held on May 8-9, 2017, with CSI as an "empty chair" defendant.

6 3.17. On May 16, 2017, the arbitrator found that Fred Meyer was 80 percent
7 negligent; CSI was 20 percent negligent; and that Luton and CentiMark were fault free.

8 3.18. The arbitrator's decision was reduced to Findings of Fact and Conclusions of
9 Law, and a Judgment by the Pierce County Superior Court. Fred Meyer satisfied the Judgment.

10 **FRED MEYER TENDERED DEFENSE AND INDEMNITY TO CENTIMARK BASED (1) ON THE
11 CONTRACT; AND (2) FRED MEYER'S STATUS AS AN ADDITIONAL INSURED, WHICH
12 CENTIMARK DENIED.**

13 3.19. Based on information and belief, CentiMark maintains a large Self-Insured
14 Retention (SIR) limit for its commercial liability policy.

15 3.20. The Master Services Agreement between Fred Meyer and CentiMark expressly
16 required CentiMark to defend, indemnify and hold Fred Meyer harmless. The provision states
17 as follows:

18 **INDEMNIFICATION**

19 Polishing Installer will indemnify and hold Kroger, its affiliates and subsidiaries
20 harmless from and against all suits, proceedings at law or in equity, claims,
21 liabilities, costs, payments and expenses (including reasonable attorneys' fees)
22 asserted against Kroger or incurred by Kroger, arising out of or in connection
23 with (i) breach of any representation, warranty or obligation hereunder, or (ii)
24 any claim for damages to property or injuries to persons, caused by or resulting
25 from the willful or negligent acts or omissions of Polishing Installer Personnel.

Additionally, the Hold Harmless Agreement executed by and between CentiMark
Corporation and The Kroger Co. on 6/29/12 provides:

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The undersigned will indemnify, defend and save harmless Kroger and its directors, officers, employees, agents, contractors, successors and assigns from and against all costs (including workers' compensation costs), claims, suits, proceedings, damages, expenses (including reasonable attorneys' fees and costs of suit), paid or incurred or suffered by Kroger in connection with or arising out of or related to Kroger's purchase, use, sale, or offering for sale the Items, except if such liability is caused by the sole negligence or willful act of Kroger or its employees.*

*NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY, CONTRACTOR'S OBLIGATION TO DEFEND, INDEMNITY AND HOLD HARMLESS IS LIMITED TO DAMAGES, COSTS AND LOSSES CAUSED BY CONTRACTOR'S NEGLIGENT ACTS OR OMISSIONS IN PERFORMING THE WORK UNDER THIS AGREEMENT TO THE EXTENT AND IN PROPORTION TO CONTRACTOR'S COMPARATIVE DEGREE OF FAULT.

3.21. In addition, the Master Services Agreement expressly required that CentiMark obtain and maintain insurance coverage and identify the Kroger Co. as an additional insured under the policy. The insurance provision set forth in the Agreement, provides in part, as follows:

INSURANCE

Polishing Installer will provide the insurance specified on Exhibit C. Polishing Installer will maintain at all times while providing the services to Kroger, at Polishing Installer's own cost and expense, general commercial liability insurance coverage in the amount of \$3,000,000 per occurrence. Polishing Installer may comply with the required "per occurrence" limit through a combination of primary and excess liability insurance policies. The insurance must be primary and not excess or contributing with any insurance or self-insurance maintained by Kroger. Polishing Installer will deliver to Kroger prior to performing services a Certificate of Insurance naming The Kroger Co. and Kroger's affiliates and subsidiaries as additional insureds.

3.22. Pursuant to this and other conditions in the Agreement, Kroger Co. was to be included as an additional insured under the applicable liability coverage obtained and maintained by CentiMark, including but not limited to its SIR.

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1 3.23. CentiMark and/or Willis of Pennsylvania, Inc. (Centimark's insurance broker)
 2 produced an ACORD Certificate of Liability Insurance identifying the certificate holder as
 3 "The Kroger Company is included as an Additional Insured in regards to General Liability and
 4 Auto Liability, but solely as respect to work performed by or on behalf of the Named Insured in
 5 connection with the described project per the written contract."

6 3.24. The certificate named Kroger Co. as an additional insured under CentiMark's
 7 Commercial General Liability Policy issued by Arch Insurance, Policy No. 11PKG8900707,
 8 effective 5/12/2013 to 5/1/2014. Based on information and belief a Certificate of Liability
 9 exists, but cannot be currently located, with an effective policy inclusive of September 2015.

10 3.25. The allegations and claims in Luton's amended complaint triggered CentiMark's
 11 contractual duty to defend Fred Meyer as its additional insured pursuant to the Agreement. The
 12 allegations and claims in Luton's amended complaint were "arising out of or in connection with
 13 ... injuries to persons, caused by or resulting from the willful or negligent acts or omissions of
 14 Polishing Installer Personnel," namely, at the time of the incident, "there was a separation, or
 15 crack between the circular access cover and the floor in the aisle at check stand #2 that was
 16 caused by the removal of the flooring material, vinyl composition tile on the floor in check
 17 stand aisle #2. That separation created an uneven walking surface and that separation was large
 18 enough to catch the heel of a shoe." Underlying Amended Complaint ¶ 5.6. Further, the "VCT
 19 on the floor in check stand aisle #2 had been removed by employees of CM/QM. That was
 20 done as part of the store renovation." Underlying Amended Complaint ¶¶ 5.7 to 5.8.

21 3.26. Fred Meyer tendered the duty to defend Luton's claim to CentiMark by letter
 22 dated March 18, 2016, requesting a response by April 1, 2016.
 23

24 COMPLAINT - 7

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1 3.27. Fred Meyer, via the March 18, 2016 letter to CentiMark, also tendered the duty
 2 to defend based CentiMark's contractual requirement to endorse Fred Meyer as an additional
 3 insured on its commercial liability policy.

4 3.28. Defendant Brian Raymore, as the corporate representative for CentiMark, by
 5 letter dated March 21, 2016, wrongfully and unreasonably denied Fred Meyer's tender of
 6 defense, contending that: (1) the initial December 15, 2015 complaint did not identify
 7 CentiMark; (2) CSI was responsible for the electrical access covers and the lowering of the
 8 electrical cover and floor drains "is not in QuestMark's contract responsibilities"; and (3) on
 9 Sunday, September 27, 2015, the day of the accident, QuestMark was not at the site and
 10 therefore was not controlling the premises.
 11

12 3.29. Fred Meyer, by letter dated April 25, 2016, provided the amended complaint to
 13 CentiMark, which named CentiMark as a party against whom causes of action were asserted as
 14 arising from its work at Fred Meyer. The April 25, 2016 letter was Fred Meyer's second
 15 request tender of defense and indemnity to CentiMark based (1) on the contract; and (2) on
 16 Fred Meyer's endorsement as an additional insured within CentiMark's SIR.
 17

18 3.30. Defendant Brian Raymore, as the corporate representative for CentiMark, by
 19 letter dated May 6, 2016, acknowledged that the amended complaint identified causes of action
 20 against CentiMark, but nevertheless ignored its contractual duties and wrongfully and
 21 unreasonably denied Fred Meyer's second tender of defense of Luton's claims, stating that Fred
 22 Meyer "failed to recognize some important facts," namely that (1) CentiMark was not present
 23 in the store when Luton fell; and (2) Fred Meyer "inspected our work area and deemed it to be
 24 acceptable for public access."
 25

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1 3.31. Fred Meyer, by later dated March 24, 2017, submitted its final tender of defense
2 to CentiMark and Arch Insurance based on CentiMark's contractual obligations and Fred
3 Meyer's endorsement as an additional insured on Arch Insurance's policy and/or CentiMark's
4 SIR limits.

5 3.32. Defendant Brian Raymore, as the corporate representative for CentiMark
6 ignored the allegations in plaintiff's amended complaint, and by letter dated March 28, 2017,
7 wrongfully and unreasonably denied its contractual duty to defend or indemnify Fred Meyer
8 pursuant to the contract and pursuant to Fred Meyer's status as an additional insured. Instead,
9 CentiMark erroneously stated that its "duty to defend and provide additional insured coverage
10 to Kroger is driven by the contract and scope of work. It is very clear that CentiMark's contract
11 and scope of work does not include work on the circular access covers, electrical clean-out
12 boxes or sewage clean-out boxes. All those access covers are the responsibility of the general
13 contractor, CSI. CentiMark's contract and scope of work were clearly limited to the actual
14 concrete floor. The raising or lowering of any access panels was the responsibility of the
15 general contractor. It is our position that CSI is the party responsible to provide a defense and
16 indemnification to Kroger in this matter."

17 **FRED MEYER TENDERED DEFENSE AND INDEMNIFICATION TO ARCH INSURANCE, WHO
18 NEVER RESPONDED.**

20 3.33. The allegations and claims in Luton's amended complaint triggered Arch
21 Insurance's contractual duty to defend Fred Meyer as its additional insured to the extent
22 CentiMark's SIR did not apply. The allegations and claims in Luton's amended complaint were
23 "arising out of or in connection with . . . injuries to persons, caused by or resulting from the
24 willful or negligent acts or omissions of Polishing Installer Personnel," namely, at the time of
25

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1 the incident, "there was a separation, or crack between the circular access cover and the floor in
 2 the aisle at check stand #2 that was caused by the removal of the flooring material, vinyl
 3 composition tile on the floor in check stand aisle #2. That separation created an uneven walking
 4 surface and that separation was large enough to catch the heel of a shoe." Underlying Amended
 5 Complaint ¶ 5.6. Further, the "VCT on the floor in check stand aisle #2 had been removed by
 6 employees of CM/QM. That was done as part of the store renovation." Underlying Amended
 7 Complaint ¶¶ 5.7 to 5.8.

8 3.34. Fred Meyer, by letter dated June 14, 2016, first tendered the duty to defend
 9 Luton's claim to Arch Insurance, CentiMark's insurer, based Fred Meyer's endorsement as an
 10 additional insured on Arch Insurance's policy. Fred Meyer requested a response by July 15,
 11 2016. Arch Insurance did not respond.

13 3.35. Fred Meyer, by letter dated September 14, 2016, submitted its second tender of
 14 defense of Luton's claim to Arch Insurance, CentiMark's insurer, based on Fred Meyer's
 15 endorsement as an additional insured on Arch Insurance's policy. Fred Meyer requested a
 16 response by September 30, 2016. Arch Insurance did not respond.

17 3.36. Fred Meyer, by email communication dated November 22, 2016, requested a
 18 response from Arch Insurance. Arch Insurance did not respond.

19 3.37. Fred Meyer, by email communication dated December 15, 2016, requested a
 20 response from Arch Insurance. Arch Insurance did not respond.

22 3.38. Fred Meyer, by email communication dated February 10, 2017, requested a
 23 response from Arch Insurance. Arch Insurance responded via email communication on
 24 February 13, 2017 that "I'm currently reviewing this matter and will call you to discuss
 25 further."

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1 3.39. Fred Meyer followed up with numerous voice mails to Arch Insurance between
2 February 14 and February 23, 2017. None was returned or acknowledged.

3 3.40. Fred Meyer, by email communication dated February 23, 2017, requested a
4 response from Arch Insurance. Arch Insurance did not respond.

5 3.41. Fred Meyer, by email communication dated March 2, 2017, requested a
6 response from Arch Insurance. Arch Insurance did not respond.

7 3.42. Throughout the Luton litigation, Arch Insurance wrongfully and unreasonably
8 ignored Fred Meyer's tender of Luton's claim based on its endorsement as an additional
9 insured on Arch Insurance's policy.
10

11 IV. CAUSES OF ACTION

12 BREACH OF CONSTRUCTION CONTRACT: DEFENDANT CENTIMARK

13 4.1. Fred Meyer repeats, reiterates, and re-alleges each and every allegation of the
14 preceding paragraphs as if fully set forth here, verbatim and fully at length.

15 4.2. CentiMark entered into a binding written contract with Fred Meyer. CentiMark
16 owed a contractual duty to defend and indemnify Fred Meyer "from and against all suits,
17 proceedings at law or in equity, claims, liabilities, costs, payments and expenses (including
18 reasonable attorneys' fees) asserted against Kroger or incurred by Kroger, arising out of or in
19 connection with any claim for . . . injuries to persons, caused by or resulting from the willful or
20 negligent acts or omissions of Polishing Installer Personnel."

21 4.3. CentiMark breached its contractual duty to defend Fred Meyer from April 1,
22 2016, the date that Luton filed the amended complaint until May 16, 2017, the date that the
23 arbitrator determined that CentiMark was not negligent. CentiMark's duty existed
24 independently of any obligations that CentiMark's insurer may have owed to Fred Meyer.

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1 CentiMark breached its contractual duty to defend Fred Meyer because under any reasonable
2 interpretation, Luton's claims and allegations in her complaint were "were "arising' out of or in
3 connection with . . . injuries to persons, caused by or resulting from the willful or negligent acts
4 or omissions of Polishing Installer Personnel."

5 4.4. As a direct and proximate result of CentiMark's failure to fulfill its contractual
6 duty to pay for Fred Meyer's defense costs and attorneys' fees in the Underlying Lawsuit, Fred
7 Meyer incurred substantial damages in the form of defenses costs and attorneys' fees that
8 should have been paid by CentiMark pursuant to its contractual obligations in its contract with
9 Fred Meyer.

10 **DECLARATORY JUDGMENT, ADDITIONAL INSURED: CENTIMARK SIR AND ARCH INSURANCE**

11 4.5. Fred Meyer repeats, reiterates, and re-alleges each and every allegation of the
12 preceding paragraphs as if fully set forth here, verbatim and fully at length.

13 4.6. There presently exists an actual, present, and existing dispute between Fred
14 Meyer and Defendants CentiMark and Arch Insurance who have genuine and opposing
15 interests concerning whether the terms and conditions of the SIR, primary and/or excess
16 maintained by CentiMark and/or issued by Arch Insurance obligate those insurers and/or self-
17 insurers to defend or indemnify Fred Meyer as their additional insureds in connection with the
18 claims asserted in the Underlying Lawsuit.

19 **BREACH OF INSURANCE CONTRACT: ARCH INSURANCE**

20 4.7. Fred Meyer repeats, reiterates, and re-alleges each and every allegation of the
21 preceding paragraphs as if fully set forth here, verbatim and fully at length.

22 4.8. Arch Insurance's unreasonable and unfounded refusal to defend and indemnify
23 its additional insured, Fred Meyer, without reservation and deny coverage in connection with

24
25
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1 the Underlying Lawsuit was a breach of its insurance contract with its additional insured, Fred
2 Meyer.

3 4.9. As a direct and proximate result of the breaches of the insurance contract, Fred
4 Meyer has suffered damages in an amount to be proven at trial.

5 **BREACH OF SELF-INSURED RETENTION POLICY: CENTIMARK**

6 4.10. Fred Meyer repeats, reiterates, and re-alleges each and every allegation of the
7 preceding paragraphs as if fully set forth here, verbatim and fully at length.

8 4.11. CentiMark's unreasonable and unfounded refusal to defend and indemnify its
9 additional insured, Fred Meyer, without reseryation and deny coverage in connection with the
10 Underlying Lawsuit was a breach of its self-insured retention policy or insurance contract with
11 its additional insured, Fred Meyer.

12 4.12. As a direct and proximate result of the breaches of the SIR policies or insurance
13 contracts, Fred Meyer has suffered damages in an amount to be proven at trial.

14 **BAD FAITH CLAIMS HANDLING: ARCH INSURANCE, CENTIMARK, BRIAN RAYMORE**

15 4.13. Fred Meyer repeats, reiterates, and re-alleges each and every allegation of the
16 preceding paragraphs as if fully set forth here, verbatim and fully at length.

17 4.14. RCW 48.01.030 states that "The business of insurance is one affected by public
18 interest, requiring that all persons be actuated by good faith, abstain from deception, and
19 practice honest and equity in all insurance matters. Upon the insurer, the insured, their
20 providers, and their representatives rests the duty to preserving inviolate the integrity of
21 insurance."

22 4.15. RCW 48.01.070 defines "person" as "any individual, company, insurer,
23 association, organization, reciprocal or interinsurance exchange, partnership, business trust, or

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1 corporation."

2 4.16. Arch Insurance, CentiMark and Brian Raymore each had a duty to act in good
3 faith in their dealings with Fred Meyer.

4 4.17. Arch Insurance, CentiMark, and Brian Raymore's unreasonable and unfounded
5 refusal to defend or indemnify their additional insured, Fred Meyer, without reservation and
6 deny coverage in connection with the Underlying Lawsuit are all breaches of its duty of good
7 faith and fair dealing owed to its additional insured, Fred Meyer, as required under Washington
8 statutory law (RCW 48.01.030; and RCW 48.30 *et seq.*, The Insurance Fair Conduct Act);
9 regulatory law (WAC 284-30, The Unfair Claims Settlement Practices Regulation); as well as
10 common law, despite there being adequate time and information from which to make coverage
11 determinations and/or issue a response letter with respect Fred Meyer's demand for a defense
12 or indemnity of the Underlying Lawsuit, based on Fred Meyer's endorsement as an additional
13 insured.

14 4.18. As a direct and proximate result of the breaches of their duties under statutory
15 and regulatory law, as well as breaches of good faith and fair dealing in denying coverage, Fred
16 Meyer has suffered damages in an amount to be proven at trial.

17 **CONSUMER PROTECTION ACT VIOLATIONS: ARCH INSURANCE, CENTIMARK, BRIAN
18 RAYMORE**

19 4.19. Fred Meyer repeats, reiterates, and re-alleges each and every allegation of the
20 preceding paragraphs as if fully set forth here, verbatim and fully at length.

21 4.20. Arch Insurance, CentiMark, and Brian Raymore's unreasonable and unfounded
22 refusal to defend or indemnify their additional insured, Fred Meyer, and deny coverage is a
23 violation of their statutory obligation to act in good faith in all insurance matters and constitutes
24

25 COMPLAINT- 14

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per se violations of the Consumer Protection Act, RCW 19.86 *et seq.*

4.21. As a direct and proximate result of its *per se* violations of the Consumer Protection Act, RCW 19.86 *et seq.*, Fred Meyer has suffered damages in an amount to be proven at trial.

OLYMPIC STEAMSHIP FEES: ARCH INSURANCE, CENTIMARK AND BRIAN RAYMORE

4.22. Arch Insurance, CentiMark, and Brian Raymore have compelled Fred Meyer to initiate this action to obtain the benefits of its insurance policy and/or SIR, based on Fred Meyer's endorsement as an additional insured, and under the *Olympic Steamship* doctrine, Fred Meyer is entitled to an award of its litigation costs, expenses, and attorneys' fees incurred in obtaining relief in this action.

V. PRAYER FOR RELIEF

WHEREFORE, Fred Meyer prays for a judgment as follows:

5.1 Declaring that Arch Insurance and CentiMark are obligated to defend and indemnify Fred Meyer, its additional insured, in connection with Plaintiff Luton's claims in the Underlying Lawsuit pursuant to the terms and conditions of Arch Insurance's policy and/or CentiMark's SIR;

5.2 For damages directly and proximately caused by CentiMark's breach of its construction contract with Fred Meyer:

5.3 All damages directly and proximately caused by Arch Insurance's breach of its insurance contract and/or CentiMark's breach of its SIR with the additional insured, Fred Meyer;

5.4 All damages directly and proximately caused by Arch Insurance, CentiMark, and/or Brian Raymore's breach of their duties of good faith and fair dealings under Washington

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1 statutory, regulatory, and common law, including treble damages under the Insurance Fair
2 Conduct Act, RCW 48.30 *et seq.*;

3 5.5 All damages directly and proximately caused by Arch Insurance, CentiMark
4 and/or Brian Raymore's *per se* violations of the Consumer Protection Act, RCW 19.86 *et seq.*
5 for violating their statutory obligation to act in good faith in all insurance matters, including
6 treble damages, court costs, and attorneys' fees;

7 5.6 Awarding Fred Meyer the sum expended for reasonable litigation expenses and
8 attorneys' fees under the *Olympic Steamship* doctrine;

9 5.7 For an award of costs pursuant to RCW 7.24.100;

10 5.8 For prejudgment interest at the highest allowable rate on all liquidated amounts
11 including, but not limited to all attorneys' fees, costs, and expenses incurred by Fred Meyer in
12 Fred Meyer's defense against claims asserted in the Underlying Lawsuit;

13 5.9 For consequential damages resulting from each defendant's breach;

14 5.10 For leave to amend this Complaint based on information or evidence revealed in
15 discovery or at trial; and

16 5.11 For such other and further relief as this Court deems just and equitable.

17 DATED this 4 day of April, 2018.
18

19 FLOYD, PFLUEGER & RINGER, P.S.
20

21 By:

22 Thomas B. Nedderman, WSBA #28944
23 Amber L. Pearce, WSBA #31626
24 Attorneys for Fred Meyer Stores, Inc.

25 COMPLAINT - 16

FLOYD, PFLUEGER & RINGER P.S.

200 W. THOMAS ST., SUITE 500
SEATTLE, WA 98119-4296
TEL 206 441-4455
FAX 206 441-8484

EXHIBIT 1

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

April 04 2018 2:57 PM

KEVIN STOCK
COUNTY CLERK
NO: 18-2-07061-4

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

INC. D/B/A FRED MEYER STORES, INC. KROGER
Plaintiff(s)

vs.

CENTIMARK CORPORATION
Defendant(s)

NO. 18-2-07061-4

ORDER ASSIGNING CASE TO JUDICIAL
DEPARTMENT AND SETTING REVIEW
HEARING DATE(PCLR3/PCLR40)

Judge: Jerry Costello
Department: 07
Docket Code: ORACD

Notice to Plaintiff/Petitioner(s):

- * Case filed, then served: Plaintiff(s)/Petitioner(s) shall serve a copy of this Order Assigning Case to Judicial Department on the Defendant(s)/Respondent(s) along with a copy of the Summons and Complaint.
- * Case served, then filed: Plaintiff(s)/Petitioner(s) shall serve a copy of this Order Assigning Case to Judicial Department within five (5) court days of filing.
- * Service by publication pursuant to court order: Plaintiff(s)/Petitioner(s) shall serve a copy of this Order Assigning Case to Judicial Department within five (5) court days of the Defendant(s)/Respondent(s) first response or appearance.

Trial Date:

A trial date may be obtained by filing a 'Note of Issue' for assignment of a trial date by noon at least six (6) court days prior to the date fixed for the mandatory hearing date set out below.

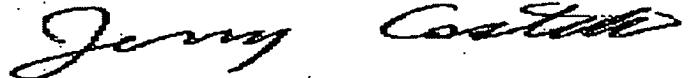
If a trial date is NOT obtained, failure to appear on the date below may result in dismissal of the case by the Court. Further, if the case has been fully resolved and all final papers have been entered by the Court, no appearance is required.

Mandatory Hearing Date: July 27, 2018 at 9:00 AM

At the time of this mandatory hearing, the Court may provide you with a Case Schedule which may include the trial date, if necessary. Failure to appear on this date may result in dismissal of the case by the Court.

Cases Agreed or by Default:

If you settle your case by entry of an order of default or agreement and all of the appropriate time requirements have been met, you may file a 'Note for Commissioner's Calendar to appear before a Court Commissioner for entry of all final papers unless presentation is allowed in the Commissioner's Ex Parte Department.



Jerry Costello
Department 07

April 4, 2018
Date